UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 9

LEGGETT & PLATT, INC.,
Employer,

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Union,

and

KEITH PURVIS, JAMES GREEN, ALBERT DWAYNE HAWKINS, GLENN DIXON, JACK KEITH, FREDRICK SANDEFLUR, BRIAN PATRICK, TIM KEETON, JAMES WELLS, JUSTIN GILVIN, and MARVIN ROGERS.

Intervenors.

Case Nos. 09-CA-194057
09-CA-196426
09-CA-196608

MOTION TO INTERVENE

I. INTRODUCTION AND BACKGROUND

Pursuant to Section 102.29 of the Board's Rules and Regulations, the Administrative Procedure Act, 5 U.S.C. §§ 554 and 702, Board case law, and the requirements of due process under the Fifth Amendment to the United States Constitution, Keith Purvis, and 10 of his co-workers ("Employee-Intervenors" or "Purvis"), hereby move to intervene as a full party in the above-captioned cases, set for trial on July 24, 2017.

Employee–Intervenors are employees of Leggett & Platt ("Leggett" or "Employer") in a bargaining unit represented by Charging Party International Association of Machinists ("IAM" or "Union").

In 2016 and 2017, Purvis conceived of and led the decertification effort that led to a majority petition that demanded Leggett's withdrawal of representation from the IAM. On March 1, 2017, when Leggett withdrew recognition, Purvis' petition contained signatures from 167 out of 295 employees (56.6%).[1] However, after the decertification petition was collected, 28 employees who singed Purvis' decertification petition also allegedly signed an IAM counter petition. These dual signatures have led the General Counsel to assert Purvis' decertification petition was only supported by 139 signatures—short of the 148 needed for a withdrawal.

The General Counsel alleges 10 of the Employee-Intervenors—James Green, Albert Hawkins, Glenn Dixon, Jack Keith, Fredrick Sandeflur, Brian Patrick, Tim Keaton, James Wells, Justin Gilvin, and Marvin Rodgers—supported the Union's petition. In reality, however, all 10 opposed Union representation at the time of withdrawal, and supported Purvis' decertification petition. Accordingly, at-least 149 employees—a majority—supported Purvis' petition and the General Counsel seeks an unlawful remedy to reinstate a minority union. Such a result would impermissibly squash employees' rights under Section 7 and Section 9 of the Act to free themselves from the yoke of a minority union.

[1] The petition also contained 15 signatures of employees who had left the bargaining unit by the time of withdrawal.

Intervention was recently granted by an ALJ in a nearly identical case. In *Johnson Controls, Inc.*, NLRB Case No. 10-CA-151843 (Feb. 16, 2016), the General Counsel alleged an employer unlawfully withdrew recognition from a union because a number of employees signed union authorization cards after signing a decertification petition. At the hearing, the ALJ granted the decertification petitioners' motion for intervention, noting the two petitioners had a right to participate in the trial because their right to be free form a union were at stake. (*See* Attachment A, Transcript from *Johnson Controls*).

Employee-Intervenors seek similar status to protect their Sections 7 and 9 rights to refrain from unionization. Neither Leggett, nor IAM, nor the General Counsel can adequately protect Purvis and his fellow employees' right to decertify under the Act.

II. STANDARDS FOR GRANTING INTERVENTION

The Board lacks precise standards for when intervention should be granted. Generally, ALJs decide such issues on an ad hoc basis. However, Federal Rule of Civil Procedure 24 provides for intervention as of right and contains defined standards and criteria. Fed. R. Civ. P. 24(a), states:

> Upon timely application anyone shall be permitted to intervene in an action:... when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Federal courts apply a four-part test to evaluate claims for intervention under this rule: (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the

action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action. *See, e.g., IAMd States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002); *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

In applying these tests, Rule 24(a) must be construed "broadly in favor of potential intervenors," *City of Los Angeles*, 288 F.3d at 397, and in light of the liberal policies favoring intervention. This four-part test is satisfied here.

III. ARGUMENT

A. The Motion to Intervene is timely.

The Motion to Intervene is being filed 5 days prior to the start of the hearing. It is timely and no party is prejudiced.

B. The fundamental purposes and policies of the Act support intervention because the employees have legally protectable rights at stake in this case.

Purvis and his fellow employees' rights under NLRA Sections 7 and 9 lie at the very heart of these proceedings and they are entitled to protect them. "The fundamental policies of the Act are to protect employees' rights to choose or reject collective-bargaining representatives, to encourage collective bargaining, and to promote stability in bargaining relationships." *HTH Corp.*, 356 NLRB 1397, 1428 (2011), citing *Levitz Furniture Co. of the* Pacific, Inc., 333 NLRB 717, 723 (2001). "Undoubtedly the cornerstone of [the] Act is Section 7 which guarantees to *employees* certain basic rights."

University of Chicago, 272 NLRB 873, 877 (1984) (Member Zimmerman, dissenting) (emphasis added). NLRA Section 7 provides that:

> [e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . . .

Both the Board and the Supreme Court have noted that the primary focus of the NLRA is the expansion and protection of the rights of employees—not the rights of unions or employers. "'The National Labor Relations Board is not just an umpire to referee a game between an employer and a union. It is also a *guardian of individual employees*. Their voice, though still and small, commands a hearing.'" *McCormick Construction Co.*, 126 NLRB 1246, 1259-60 (1960) (emphasis added), quoting *Shoreline Enter. of Am., Inc. v. NLRB*, 262 F.2d 933, 944 (5th Cir. 1959). In fact, "the NLRA confers rights *only on employees*," and any rights that a labor union enjoys are merely derivative of the employees' Section 7 rights. *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (emphasis added); *New York New York, LLC*, 356 NLRB No. 119, at *11 (2011); *Leslie Homes, Inc.*, 316 NLRB 123, 127 (1995). "If the rights of employees are being disregarded," it is incumbent upon the Board "to take affirmative action to effectuate the policies of the Act" and ensure that "those rights be restored." *McCormick Const.*, 126 NLRB at 1259.

In this case, Employee-Intervenors have stated they do not want to be represented by IAM. As such, their core Section 7 right to freely choose or reject a bargaining agent—a right that is the very "essence of Section 7"—is being thwarted. *McDonald*

Partners, Inc., 336 NLRB 836, 839 (2001) (Chairman Hurtgen, dissenting). The General Counsel is attempting to impose a minority union back on the employees who reject it. It is doing so under the pretense that 10 of the Intervenors supported the Union. "There could be no clearer abridgment of § 7 of the Act . . ." than for a union and employer to engage in collective bargaining when a majority of employees do not support union representation. *International Ladies' Garment Workers Union v. NLRB*, 366 U.S. 731, 737 (1961).

The exclusion of the Employee-Intervenors from this proceeding would inflict irreparable damage on the rights the Act is designed to protect. The Board simply cannot accomplish its statutory charge of providing a voice to and vindicating the rights of employees if it excludes the key employees— the decertification petitioners—and refuses to provide them any role in the litigation over *their* Section 7 and 9 rights. To the contrary, such a result would serve as a glaring example of how the Board's prosecutorial process can utterly disregard employees' rights and preferences by imposing unwanted collective bargaining relationships upon them. The General Counsel's Complaint is predicated on the false notion that Purvis' petition lacked majority support because it was nine

signatures short. Only 10 of the Employee-Intervenors' can offer testimony rebut the General Counsel's false assertions and definitively prove their opposition to the Union.

The Employee-Intervenors have concrete legal rights at stake in this case, which will be permanently impaired if the General Counsel's Complaint is sustained. This possible outcome is more than enough to sustain their intervention.

C. No current party can adequately represent the Employee-Intervenors or protect their rights under the NLRA.

One of the traditional factors to weigh in deciding a motion to intervene is whether any existing party will represent the intervenor's interests. An applicant in intervention need not show that the existing parties will engage in conduct detrimental to his interests. To the contrary, the requirement of inadequacy of representation "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be minimal." *Trbovich v. IAMd Mine Workers*, 404 U.S. 525, 538 n. 10 (1972) (citation omitted). Whether representation may be inadequate has nothing to do with the quality of the parties' attorneys: "Rule 24 requires that we look to the adequacy or inadequacy of representation by 'existing parties,' not counsel." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 529 (9th Cir. 1983).

Leggett cannot adequately protect the employees' Section 7 rights in these proceedings. Contending otherwise defies common sense and contradicts the fundamental premise upon which the Act is based. "The Act was premised on the view that there is a fundamental conflict between the interests of the employers and employees engaged in collective bargaining . . . ." *Brown Univ.*, 342 NLRB 483, 487-88 (2004); *Boston Med. Ctr. Corp.*, 330 NLRB 152, 178 (1999). Recognizing this, the Board and the federal courts have resoundingly rejected the notion of an employer serving as the "vindicator of its employees' organizational freedom." *Corrections Corp. of Am.*, 347 NLRB 632, 655 n.3 (2006), citing *Auciello Iron Works*, 517 U.S. 781, 792 (1996). By very definition, "[t]he employer has its self-interest to watch over and those interests are not necessarily

aligned with those of its employees." 347 NLRB at 655 n.3. Accordingly, "[t]he Board is … entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union . . . ." *Auciello*, 517 U.S. at 790; *International Ladies' Garment Worker*, 366 U.S. at 738-39.

Here, the General Counsel contends that Leggett *violated* its employees' Section 7 rights. It is logically inconsistent to conclude that Leggett can simultaneously serve as both the violator and the *vindicator* of its employees' interests. Regardless, even where the employees' interests overlap those of their Employer, the defense of those interests will necessarily be undertaken from the unique perspective of each party. Although Leggett may desire the same result, it may not have Employee-Intervenors' best interests in mind, nor adequately protect their position.

For example, Leggett's economic interests could lead it to settle the case to save itself the cost and disruption of further litigation. For business or financial reasons, any rational employer might choose to settle ULP charges and accept an unpopular union despite proof of the employees' opposition to union representation. *See Nova Plumbing,* 330 F.3d at 537. Leggett has business interests to defend while Purvis and the employees who signed his petition have statutory rights to vindicate. Without intervention and full party status, the Employee-Intervenors are powerless to contest any settlement and restoration of the IAM.

Finally, even if Leggett elects to contest the allegations of the Complaint at a hearing, there is no guarantee that it or any other party will act in the Employee-Intervenors' best interest. There are several tactical considerations an employer may take

that harm Purvis' rights without opposing his position. The parties may enter into factual stipulations that effectively limit the testimony and evidence introduced at the hearing, or they may make strategic decisions to forego the introduction of relevant testimony. This is not hypothetical. In other cases, employers have made tactical missteps and failed to call petitioners *See Veritas Health Serv., Inc.*, 363 NLRB No. 108 (Feb. 4, 2016), *petition for review pending*, D.C. Cir. No. 16-1076 (filed Feb. 29, 2016). Consequently, there is a real and substantial risk that Leggett employees—the only individuals whose interests these proceedings are intended to protect—will be denied a voice in a case that concerns the their own intentions unless intervention is granted.

D. Permitting intervention is consistent with Board precedent.

In a wide variety of circumstances, the Board's rules and the Administrative Procedure Act allow employees to intervene in ULP cases brought by a union against an employer. Where the employees' right to determine their representative is at stake, they possess a concrete and legally sufficient interest to justify intervention. Applying the same analysis to the facts and circumstances here, it is clear that permitting the Employee-Intervenors to intervene is both appropriate and necessary to the conduct of a fair hearing.

Intervention was recently granted in an almost identical case, *Johnson Controls, Inc.*, NLRB Case No. 10-CA-151843. In *Johnson Controls*, employees presented their employer with a majority the petition and it withdrew recognition from the union. However, the General Counsel alleged because a number of employees who signed the decertification petition later signed union authorization cards, the union maintained

majority support. *Id.* at 8. The two employees who collected the decertification petition attempted to intervene in order to protect their petition. Over the objections of the General Counsel, the ALJ granted intervention. *See* Exhibit A. The case for intervention is even greater here because 10 of the employees seeking intervention are those the General Counsel falsely contends support the Union.

Another analogous case is *Local 57, International Ladies' Garment Workers Union v. NLRB,* 374 F.2d 295 (D.C. Cir. 1967). There the court ruled that the employer violated the NLRA by maintaining a "runaway shop" that unlawfully had moved from New York to Florida. The Board did not order the employer to move back to New York, but did order it to recognize the union at its new Florida operations, notwithstanding the fact that there was no evidence any of the Florida-based employees desired union representation. A 2-1 majority of the D.C. Circuit refused to enforce the Board's order to recognize the union in Florida, holding it punitive and violative of those Florida-based employees' Section 7 rights. In doing so, the court of appeals' majority lamented that the Florida-based employees did not intervene in the case, because no other litigant could realistically speak for them. *Id*. at 300 ("That these Florida workers are not before us asserting their legally protected right to freedom of choice of a bargaining agent is not controlling. Indeed their very absence indicates the need for this court to carefully scrutinize the Board's remedy."). Even the dissenting judge noted that the absence of the Florida-based employees from the case made his job more difficult. "[T]he extent to which [the Florida employees] feel aggrieved by this circumstance is wholly speculative,

since none of them are before us complaining of the deprivation of their freedom of choice." *Id.* at 304 (McGowan, J., concurring in part, dissenting in part).

In the instant case, there is no need for speculation. Employee-Intervenors seeks to participate and to argue for their interests concerning the unwanted IAM. Intervention will insure that the ALJ, the Board, and the federal courts will have no doubt where the majority of employees stand on the question of the validity of the decertification petition.

The Board has granted employees' requests to intervene in a variety of other circumstances. In one highly publicized case, *IAM, District Lodge 751 (Boeing Co.*), Case No. 19-CA-32431, the Board granted employees a qualified intervention. (Exhibit B). There, three non-union employees in South Carolina sought intervention in a case where the General Counsel attempted to terminate work being performed at their facility and transfer it to a unionized facility in Washington. The complaint alleged that Boeing's decision to open a production line in South Carolina was a form of retaliation against the union for striking at the employer's facilities in Washington. The ALJ denied the employees' Motion to Intervene, but the Board reversed, holding that those employee intervenors had articulated a sufficient interest in the case, namely, the right to choose to be non-union and the preservation of their jobs.

The same analysis holds true here. If anything, Purvis has an even stronger argument for intervention than that found in *Boeing*. There, the employee-intervenors primarily were concerned with the remedy sought by the General Counsel, namely the loss of their jobs. They had little to add to the discussion of the facts and evidence. Yet, that interest alone, independent of any larger Section 7 concerns, prompted the Board to

grant them a qualified intervention in the case. Here, Employee-Intervenors are interested not only in the ultimate remedy, but their participation is central to the question of whether the Union maintained majority support.

Similarly, in *New England Confectionary Co.*, 356 NLRB No. 68 (2010), the Board allowed an employee who had initiated a decertification petition to intervene in a ULP case filed against his employer that alleged its unlawful assistance with the decertification petition. The Board recognized that a party with a concrete interest in the proceedings has the right to intervene when an employee's decertification petition is being challenged.

Camay Drilling Co., 239 NLRB 997 (1978), is also instructive. There, the trustees of various union pension funds moved to intervene, claiming that the trusts they administered were entitled to receive increased fringe benefit contributions depending on the results of the underlying case. The trustees asserted that they had a direct financial interest in "both the resolution of the alleged unfair practices *and* in any remedy fashioned by the Board." *Id.* (emphasis added). The ALJ denied the trustees' motion to intervene on the ground that they would have no interest in the case until he first decided the threshold issue, *i.e.*, whether the Act had been violated. Thus, in the ALJ's view, the trustees' interest would not manifest itself until the NLRB were to hold a compliance proceeding, if indeed it were to hold one. On appeal, the Board reversed. Relying on Section 554(c) of the Administrative Procedure Act ("APA"), it held that the trustees must be allowed intervenor status at an early stage to challenge the ultimate remedy being sought. Further, the Board noted that the trustees' interests were not necessarily identical

to those of the charging party union, and therefore, could not adequately be protected without the trustees' actual participation. The same analysis holds true here, and Purvis specifically relies upon the APA to support this motion.

Many other cases support intervention. In *Gary Steel Products Corp*., 144 NLRB 1160, 1160 n.1, 1162 (1963), the Board permitted an employee to intervene on behalf of himself and 62 other employees in a case that concerned a union representative's misrepresentations to employees during an organizing campaign. The employer had refused to bargain with the union that filed the ULP charge, and the Board held it appropriate for the affected employees to participate in the case to assert their own rights and to help their employer's defense. The instant case is indistinguishable.

Similarly, in *J.P. Stevens & Co.*, 179 NLRB 254, 255 (1969), the ALJ permitted employees who had signed authorization cards to intervene during the course of the trial, where the complaint claimed that the employer had unlawfully interfered with a union organizing campaign. The ALJ allowed the employee-intervenors to cross-examine all witnesses, call their own witnesses, and file exceptions to the Board as full parties. The instant case is indistinguishable.

In *Washington Gas Light Co.*, 302 NLRB 425, 425 n.1 (1991), an employee revoked his dues check-off, and the employer stopped collecting dues from him. When the union filed a ULP charge against the employer to force a resumption of the dues deductions, the ALJ allowed the employee to intervene to represent his own interests and help defend his employer. Along the same lines, in *Sagamore Shirt Co.*, 153 NLRB 309,

309 n.1 (1965), the Board allowed 64 employees to intervene to establish a claim that they constituted a majority of the employees and did not wish union representation.

E. Due process requires intervention be allowed.

Finally, the due process clause of the Fifth Amendment requires intervention be granted, because a Board decision denying intervention would undermine the Employee-Intervenors' right of free association to not be forcibly represented by a minority labor union. *Mulhall v. IAM Local 355*, 618 F.3d 1279, 1286-87 (11th Cir. 2010) (employee has standing to challenge forced representation by a labor union he opposes); *Int'l Ladies' Garment Workers' Union*, 366 U.S. at 738-39. *See also Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963) (freedom of association "inseparable" aspect of liberty guaranteed by Due Process clause); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) ("Freedom of association . . . plainly presupposes a freedom not to associate."); *Thomas v. Collins*, 323 U.S. 516, 532 (1945) ("The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly."). These rights are protected by the Due Process clause of the U.S. Constitution.

To bring a claim under the Due Process Clause, a plaintiff must show (i) deprivation of a protected liberty or property interest, *see Gen. Elec. Co. v. Jackson,* 610 F.3d 110, 117 (D.C. Cir. 2010); (ii) by the government, *see Am. Mfrs. Mut. Ins. Co. v. Sullivan,* 526 U.S. 40, 50 (1999); (iii) without the process that is 'due' under the Fifth

Amendment, *see Mathews v. Eldridge,* 424 U.S. 319, 334–35 (1976). *Id*. Denial of intervention under the circumstances of this case would satisfy these criteria.

The Employee-Intervenors' have the greatest protected liberty interest at stake in this case: it will determine whether they have the right under the Act to disassociate themselves from an unwanted union. Employees' right to freely associate with, or reject, a union is fundamental under the Act, 29 U.S.C. §§ 141 and 157, and the Board cannot so cavalierly adjudicate those rights without allowing the affected employees to be heard. The right to freely associate or disassociate from a union is not only found in the Act, but within the Constitution as well. *See Mulhall*, 618 F.3d at 1287 ("regardless of whether [an employee] can avoid contributing financial support to or becoming a member of the union . . . its status as his exclusive representative plainly affects his associational rights.") (citation omitted). Because the NLRA gives Mr. Purvis the right to be free of forced unionization by a minority union, he is entitled to due process of law under the Fifth Amendment when that right was adjudicated in a manner that harms him. *NB ex rel. Peacock v. District of Columbia*, 794 F.3d 31, 41 (D.C. Cir. 2015) ("certain government benefits give rise to property interests protected by the Due Process Clause").

The NLRB seeks to return the IAM as the exclusive representative. "[T]he congressional grant of power to a union to act as exclusive collective bargaining representative" necessarily results in a "corresponding reduction in the individual rights of the employees so represented." *Vaca v. Sipes*, 386 U.S. 171, 182 (1967). Employee-Intervenors oppose such reductions of their liberty and property rights.

"'[T]he root requirement' of the Due Process Clause'" is "'that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.'" *Loudermill*, 470 U.S. at 542 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (emphasis in original)). And the core purpose of the NLRA is to protect employee rights *from* employers and unions. Here, the NLRB may not, consistent with the Due Process Clause, deny the Employee-Intervenors the opportunity to be heard in this case.

IV. CONCLUSION

The Motion to Intervene should be granted. The Employee-Intervenors have tangible statutory and pecuniary interests at stake in the outcome of the case, which are separate and distinct from those of Leggett.

Respectfully submitted,

/s/ Aaron B. Solem

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Intervene and its attachments were filed electronically with Region 9 in Cincinnati using the NLRB e-filing system, and copies were sent to the following additional parties via e-mail as noted:

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July 19, 2017

/s/ Aaron B. Solem

Aaron B. Solem

EXHIBIT A

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

In the Matter of: **Case No.: 10-CA-151843**

JOHNSON CONTROLS, INC.
Employer-Respondent

And

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO, AND ITS AFFILIATED LOCAL UNION NO. 3066
Union-Charging Party

And

BRENDA LYNCH AND ANNA MARIE GRANT
Employee - Intervenors

Place: **Florence, SC**
Date: **11/16/15**
Pages: **1-174**
Volume: **1**

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for the Respondent with Ellis Fisher, Ogletree Deakins; Tammara Lovett, counsel for Johnson Controls; and our representative, Lisa Dickerson.

MS. ROZA: Your Honor, Shira Roza for the charging party.

ADMINISTRATIVE LAW JUDGE: I'm sorry. What?

MS. ROZA: Shira Roza for the charging party, the Union.

ADMINISTRATIVE LAW JUDGE: Thank you. Now, I believe we have --

MR. TAUBMAN: One more, your Honor. Glenn Taubman for the proposed Intervener.

ADMINISTRATIVE LAW JUDGE: That's just what I was coming to. We had a petition to intervene, and so I wanted to start out by giving you the opportunity to argue in support of that petition and to give the other parties a chance to argue however they please to argue.

Please proceed.

MR. TAUBMAN: Thank you, your Honor. I'm Glenn Taubman representing two individual employees in this case, Brenda Lynch and Anna Marie Grant. These employees are the leaders of the employee

decertification effort.

They exercised their Section 7 rights by circulating the petition that is basically the heart of this case. The entire subject of this case is the validity and efficacy of that petition that they collected and submitted to their employer.

Their Section 7 rights are what this entire proceeding is supposed to be about. Furthermore, this case, this CA case, is being used to block the subsequent decertification petition that Ms. Lynch filed.

So it is our position that they possess sufficient interests in this proceeding because it is their petition and their rights -- that they have a sufficient interest that they should be permitted to intervene.

Additionally, I would add that there are no existing parties that represent their interest in this case; not the General Counsel, not the UAW, and not Johnson Controls.

Johnson Controls is charged with protecting its own interests, not the Section 7 rights of these employees. In fact, the General Counsel argues that, well,

Johnson Controls has a similar interest and will, in effect, protect these employees' rights, but that's a rather incongruous position because the General Counsel is also arguing that Johnson Controls violated these employees' rights. So how a party can both violate and vindicate employees' rights at the same time is a novel to me.

So, with that, I'm not gonna belabor the papers that we filed. They're all before your Honor. We attached some ALJ and Board rulings on intervention motions that I think are pertinent; especially the Renaissance Hotel case in which an ALJ allowed intervention in a case similar to this one where charges were blocking employees' decertification petition.

So, with that, I will just conclude by asking your Honor to allow them -- my clients to intervene and participate in this case as full parties.

ADMINISTRATIVE LAW JUDGE: Let me ask you: Did you intend to call witnesses?

MR. TAUBMAN: I would say the answer is probably not, but I would like to reserve that and participate as a full party and see how this

unfolds.

ADMINISTRATIVE LAW JUDGE: I see. So you wish to -- in participating as a full party, you wish to at least cross-examine the other witnesses?

MR. TAUBMAN: Yes.

ADMINISTRATIVE LAW JUDGE: Very well. I want to get all the parties' positions on this. Why don't we start with the General Counsel.

MS. WOLFE: Your Honor, the General Counsel's position is to oppose the motion to intervene.

The General Counsel is the statutory representative of employees' rights, and here, the movement to intervene represents two employees, which is hardly representative of the entire collective bargaining unit. And this case is also regarding an unlawful withdrawal of recognition by the Respondent, and case law --

The Board actually issued an order in Latino Express, which is a case with similar facts to this, in that there was an unlawful withdrawal of recognition based on an employee decertification position affirming the ALJ's decision to deny the motion to intervene.

ADMINISTRATIVE LAW JUDGE: Thank you.

And does the Union have a position?

MS. ROZA: Yes. The Union opposes the proposed employee intervener's motion to intervene.

First of all, it's my understanding that neither the Board, nor the Union, intends to challenge the authenticity of the employees' petition against the Union, so, therefore, any testimony that the proposed employee interveners would seek to enter on that issue is irrelevant.

Also, the proposed interveners and the employer have the same goal; that is, they both seek a finding that the withdrawal of recognition was proper. If the employer's successful, that would mean the elimination of the Union as the employee's collective bargaining representative, which is exactly what the proposed employee interveners desire.

Also, according to their motion, the proposed employee interveners were concerned that JCI might, in this case, for business or financial reasons, back down or settle the case or stipulate to the facts, and it's clear at this point that the employer does not intend to do so. Therefore, the employer's free to introduce any testimony on the petition that it deems valid, to the extent

it's relevant in this proceeding.

ADMINISTRATIVE LAW JUDGE: And the Respondent? What is your position?

MR. FISHER: We have no opposition to the intervener's request to intervene.

ADMINISTRATIVE LAW JUDGE: Very well. Well, previously when this has come up, my inclination has been to grant limited intervention rights to the extent of filing a brief but not to call witnesses or to examine a witness.

But, thinking about it in this case, weighing the downsides against the positive sides, my primary job is to make sure that the hearing is fair. And I think that there's a greater chance of unfairness if I exclude the Intervener than if I allow the Intervener, and I don't see that it can harm anything for the Intervener to be allowed to participate. The worst that would happen is that the hearing might take a little longer. But that's not really a consideration.

So I will grant intervention rights. But I would ask this: I would ask that you remind me, if I should forget -- ask the Intervener to remind me not to ignore you and to give you your opportunity, because this is unusual and, out of

force of habit, I may skip over you inadvertently.

The other thing I would ask, if you haven't already, all parties sign an appearance sheet. And we can put the Intervener on that sheet, too.

So I grant the motion to intervene.

MS. WOLFE: Would you like that appearance sheet, your Honor?

ADMINISTRATIVE LAW JUDGE: I'm sorry. What?

MS. WOLFE: Would you like that appearance sheet, your Honor?

ADMINISTRATIVE LAW JUDGE: At the break would be fine. Anything else before we go to opening statements?

MS. WOLFE: Your Honor, we would like to make a motion to sequester pursuant to Greyhound --

ADMINISTRATIVE LAW JUDGE: I'm sorry. Would you say that again? It's a big courtroom.

MS. WOLFE: My apologies, your Honor. We would like to make a motion to sequester.

ADMINISTRATIVE LAW JUDGE: Very well. I will read to you from Greyhound Lines 319 NLRB 554: Counsel has invoked a rule requiring that the witnesses be sequestered. This means that all

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY

and Case No. 19-CA-32431

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 751, affiliated with
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

ORDER

On June 1, 2011, three individuals – Dennis Murray, Cynthia Ramaker, and Meredith Going, Sr. – filed a joint motion to intervene in the above-captioned case. These individuals state that they are current employees of The Boeing Company working in Boeing's North Charleston facility or other related facilities located nearby. They claim to have "a direct and tangible stake in the outcome of this case because their employment will almost certainly be affected or even terminated if the General Counsel's proposed remedy is imposed." Motion to Intervene, p. 3.

By order dated June 2, 2011, the Regional Director for Region 19 referred the motion to Administrative Law Judge Clifford H. Anderson for disposition. Thereafter, Judge Anderson issued an Order providing the parties an opportunity to submit statements of position on the Motion to Intervene. The Boeing Company supported the motion to intervene based upon the putative intervenors' "direct interest in the outcome of the case." The Acting General Counsel and the International Association of Machinists and Aerospace Workers District Lodge 751 opposed the motion to intervene on the grounds, inter alia, that the putative intervenors have no legally cognizable interest in the case. However, the AGC and District Lodge 751 indicated that

they do not object to the putative intervenors being allowed to file a post-hearing brief on their own behalf.

On June 8, 2011, Judge Anderson issued a ruling denying the motion to intervene. In rejecting the putative intervenors' request, the Judge reasoned, inter alia, that the putative intervenors "have no protected or direct interest in the instant case." Ruling on Motion to Intervene, p. 8. In addition, the judge found that the existing parties would insure that "all the relevant issues under the complaint and the proposed remedy are rigorously dealt with" and that even granting limited intervention "would both further complicate and protract and delay the proceeding." Ruling on Motion to Intervene, p. 8.

On June 9, 2011, individuals Murray, Ramaker, and Going filed a Request for Special Permission to Appeal the Judge's ruling denying the motion to intervene. In urging the Board to overrule the Judge's ruling below, they argue, inter alia, that the Judge erred in finding that they have no "legally significant" or "direct interest" in the proceeding and in finding that their participation would further "complicate and protract and delay" the proceeding. In this regard, they assert:

> The Intervenors recognize and stress again in this Appeal, as they did in their Reply, that they have neither the ability nor the intent to make the arguments, scrutinize the evidence, or involve themselves in the trial examination and cross-examination of the parties' witnesses in which the other parties will necessarily need to engage to make or rebut the AGC' s case.
>
> The Intervenors do not wish to make Boeing's case. They have a different case to make: that the AGC's prosecution and proposed remedy implicates their Section 7 rights. To that end, the Intervenors' participation will not "complicate and protract and delay" the proceedings. At most, the presentation of their evidence will consume one-half to one trial day. Intervenors' Appeal of Ruling Denying Motion to Intervene, p. 6.

On June 13, 2011, the judge granted in part and denied in part a motion by the attorneys general of 16 states to file a brief as amicus curiae in the instant case. The judge limited the

subject of the brief to "the issue of the appropriate remedy, should the allegations of the complaint be sustained in whole or in part." Ruling on Motion to File Amicus Curiae Brief at 4.

Having duly considered the matter, we grant the request for special permission to appeal. On the merits, we grant in part and deny in part the appeal. In the unique circumstances of this case, we find that the three individuals have articulated a sufficient interest in this proceeding to grant them limited intervention solely for the purpose of filing a post-hearing brief with the administrative law judge. However, this order grants the limited intervenors no other rights in relation to this proceeding.[1] Accordingly,

IT IS ORDERED that the appeal is granted in part and denied in part, and the administrative law judge's ruling is modified to the extent that the three individuals, Murray, Ramaker, and Going, are granted limited intervenor status solely for the purpose of filing a post-hearing brief with the administrative law judge, subject to reasonable limits established by the judge (e.g., as to filing deadline, length, or scope).

Dated, Washington, D.C., June 20, 2011

_____
Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

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Brian E. Hayes, Member

(SEAL) **NATIONAL LABOR RELATIONS BOARD**

[1] This Order is without prejudice to the right of the Intervenors to file a motion with the judge seeking further participation based upon changed circumstances.